

## CITY COUNCIL AGENDA MEMORANDUM

### SUBJECT

Resolution No. 8634 authorizing execution of an amendment to the Professional Services Agreement with Kenyon Disend, PLLC to increase the total contract amount from \$250,000 to \$500,000 for legal services and representation in property acquisitions and/or eminent domain proceedings for multiple parcels located at NE 4<sup>th</sup> Street

### FISCAL IMPACT

This is one of two separate actions requested of Council tonight related to the NE 4th Street Extension – 116th to 120th Avenues NE project (CIP Plan No PW-R-160). The second action requested is to award the bid for construction of Phase 1 of the NE 4<sup>th</sup> Street project from 116<sup>th</sup> Avenue NE to the Burlington Northern Santa Fe Rail Road (BNSF) right-of-way.

This action obligates the City to an increase in the total contract amount for outside legal services provided by Kenyon Disend, PLLC by \$250,000.

Original Contract	\$ 49,000
Amendment #1	201,000
Amendment #2	<u>250,000</u>
<b>New Contract Total Amount</b>	<b>\$500,000</b>

The NE 4<sup>th</sup> Street project has been a catalyst in recent Council discussions regarding the General CIP cash flow and overall budget update. In summary, the City is projecting the loss of approximately \$15 million in anticipated revenues, and net cost increases to adopted projects of approximately \$5 million through 2019 (\$9 million of which is included in the 2014 cash flow projection). Staff is also requesting Council's authorization to execute an interfund loan from the Utility Capital Investment Program Fund to provide interim financing for projects included in the General CIP. The NE 4<sup>th</sup> Street project is facing an \$11 million funding shortfall to fully fund the project, which is included in the total CIP calculation above. Staff proposes that the ending fund balance be used to address the projected funding gap in NE 4<sup>th</sup> and will return to Council on November 4 as part of the Mid-Biennium update, unless directed otherwise, to present the necessary amendments to the CIP. Assuming the cash flow borrowing action presented earlier this evening to Council is approved, there are sufficient funds to fund this contract.

### STAFF CONTACT

Mary Kate Berens, Deputy City Attorney, 452-4616  
Lori M. Riordan, City Attorney, 452-7220  
*City Attorney's Office*

### POLICY CONSIDERATION

Should the City continue to retain outside counsel for legal services and representation in property acquisitions and/or eminent domain proceedings?

## **BACKGROUND**

The Council previously adopted a condemnation ordinance for Phase 1 of the NE 4<sup>th</sup> Street expansion project. Kenyon Disend, PLLC was retained to file a series of condemnation petitions on behalf of the City. The City has yet to reach resolution on four of the condemnation petitions. Those matters are scheduled for trial in December 2013 and February 2014. The requested additional funding is intended to cover the cost to fully resolve these matters through a negotiated settlement or a minimum of one trial, but likely would not cover the cost to take each matter through trial.

## **EFFECTIVE DATE**

If adopted, this Resolution will be effective immediately.

## **OPTIONS**

1. Adopt Resolution No. 8634 authorizing execution of the amendment to the Agreement with Kenyon Disend, PLLC increasing the total contract to an amount not to exceed \$500,000.
2. Do not adopt Resolution No. 8634, do not authorize the payment for these additional legal services and provide alternative direction to staff.

## **RECOMMENDATION**

Adopt Resolution No. 8634, authorizing execution of an amendment to the Professional Services Agreement with Kenyon Disend, PLLC in a total contract amount not to exceed \$500,000 for legal services and representation in property acquisitions and/or eminent domain proceedings for multiple parcels located at NE 4th.

## **MOTION**

Move to adopt Resolution No. 8634, authorizing execution of an Amendment to the Professional Services Agreement with Kenyon Disend, PLLC in a total contract amount not to exceed \$500,000 for legal services and representation in property acquisitions and/or eminent domain proceedings for multiple parcels located at NE 4th.

## **ATTACHMENTS**

Proposed Resolution No. 8634

## **AVAILABLE IN COUNCIL OFFICE**

Amendment #2 to the Agreement for Services (Professional Services Contract)

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 8634

A RESOLUTION authorizing the City Manager or his designee to execute an amendment to the Professional Services Agreement with Kenyon Disend, PLLC to increase the total contract amount from \$250,000 to \$500,000 for legal services and representation in property acquisitions and/or eminent domain proceedings for multiple parcels located at NE 4<sup>th</sup>.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES  
RESOLVE AS FOLLOWS:

Section 1. The City Manager or his designee is hereby authorized to execute an amendment to the Professional Services Agreement with Kenyon Disend, PLLC to increase the total contract amount from \$250,000 to \$500,000 for legal services and representation in property acquisitions and/or eminent domain proceedings for multiple parcels located at NE 4<sup>th</sup>, a copy of which amendment has been given Clerk's Receiving No. \_\_\_\_\_.

Passed by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2013,  
and signed in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_,  
2013.

(SEAL)

\_\_\_\_\_  
Conrad Lee, Mayor

Attest:

\_\_\_\_\_  
Myrna L. Basich, City Clerk